

House of Representatives, March 26, 1998. The Committee on Government Administration and Elections reported through REP. BYSIEWICZ, 100th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE NONDISCLOSURE OF TRADE SECRETS UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 1-19 of
2 the general statutes, as amended by section 4 of
3 public act 97-47 and section 14 of public act
4 97-293, is repealed and the following is
5 substituted in lieu thereof:
6 (b) Nothing in the Freedom of Information Act
7 shall be construed to require disclosure of (1)
8 preliminary drafts or notes provided the public
9 agency has determined that the public interest in
10 withholding such documents clearly outweighs the
11 public interest in disclosure; (2) personnel or
12 medical files and similar files the disclosure of
13 which would constitute an invasion of personal
14 privacy; (3) records of law enforcement agencies
15 not otherwise available to the public which
16 records were compiled in connection with the
17 detection or investigation of crime, if the
18 disclosure of said records would not be in the
19 public interest because it would result in the
20 disclosure of (A) the identity of informants not
21 otherwise known or the identity of witnesses not
22 otherwise known whose safety would be endangered

23 or who would be subject to threat or intimidation
24 if their identity was made known, (B) signed
25 statements of witnesses, (C) information to be
26 used in a prospective law enforcement action if
27 prejudicial to such action, (D) investigatory
28 techniques not otherwise known to the general
29 public, (E) arrest records of a juvenile, which
30 shall also include any investigatory files,
31 concerning the arrest of such juvenile, compiled
32 for law enforcement purposes, (F) the name and
33 address of the victim of a sexual assault under
34 section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b
35 or 53a-73a, or injury or risk of injury, or
36 impairing of morals under section 53-21, AS
37 AMENDED, or of an attempt thereof, or (G)
38 uncorroborated allegations subject to destruction
39 pursuant to section 1-20c; (4) records pertaining
40 to strategy and negotiations with respect to
41 pending claims or pending litigation to which the
42 public agency is a party until such litigation or
43 claim has been finally adjudicated or otherwise
44 settled; (5) trade secrets [, which for purposes
45 of the Freedom of Information Act, are defined as
46 unpatented, secret, commercially valuable plans,
47 appliances, formulas or processes, which are used
48 for the making, preparing, compounding, treating
49 or processing of articles or materials which are
50 trade commodities obtained from a person and which
51 are recognized by law as confidential, and
52 commercial or financial information given in
53 confidence, not required by statute] PROVIDED TO A
54 PUBLIC AGENCY IN CONFIDENCE, WHICH ARE NOT
55 REQUIRED TO BE PROVIDED BY STATUTE, OR A TRADE
56 SECRET OF A MUNICIPAL UTILITY ESTABLISHED UNDER
57 CHAPTER 101 OR ANY OTHER MUNICIPAL ELECTRIC OR GAS
58 UTILITY OWNED, LEASED, MAINTAINED, OPERATED,
59 MANAGED OR CONTROLLED BY ANY UNIT OF LOCAL
60 GOVERNMENT UNDER THE GENERAL STATUTES OR A SPECIAL
61 ACT; (6) test questions, scoring keys and other
62 examination data used to administer a licensing
63 examination, examination for employment or
64 academic examinations; (7) the contents of real
65 estate appraisals, engineering or feasibility
66 estimates and evaluations made for or by an agency
67 relative to the acquisition of property or to
68 prospective public supply and construction
69 contracts, until such time as all of the property
70 has been acquired or all proceedings or

71 transactions have been terminated or abandoned,
72 provided the law of eminent domain shall not be
73 affected by this provision; (8) statements of
74 personal worth or personal financial data required
75 by a licensing agency and filed by an applicant
76 with such licensing agency to establish his
77 personal qualification for the license,
78 certificate or permit applied for; (9) records,
79 reports and statements of strategy or negotiations
80 with respect to collective bargaining; (10)
81 records, tax returns, reports and statements
82 exempted by federal law or state statutes or
83 communications privileged by the attorney-client
84 relationship; (11) names or addresses of students
85 enrolled in any public school or college without
86 the consent of each student whose name or address
87 is to be disclosed who is eighteen years of age or
88 older and a parent or guardian of each such
89 student who is younger than eighteen years of age,
90 provided this subdivision shall not be construed
91 as prohibiting the disclosure of the names or
92 addresses of students enrolled in any public
93 school in a regional school district to the board
94 of selectmen or town board of finance, as the case
95 may be, of the town wherein the student resides
96 for the purpose of verifying tuition payments made
97 to such school; (12) any information obtained by
98 the use of illegal means; (13) records of an
99 investigation or the name of an employee providing
100 information under the provisions of section
101 4-61dd, AS AMENDED; (14) adoption records and
102 information provided for in sections 45a-746,
103 45a-750 and 45a-751; (15) any page of a primary
104 petition, nominating petition, referendum petition
105 or petition for a town meeting submitted under any
106 provision of the general statutes or of any
107 special act, municipal charter or ordinance, until
108 the required processing and certification of such
109 page has been completed by the official or
110 officials charged with such duty after which time
111 disclosure of such page shall be required; (16)
112 records of complaints, including information
113 compiled in the investigation thereof, brought to
114 a municipal health authority pursuant to chapter
115 368e or a district department of health pursuant
116 to chapter 368f, until such time as the
117 investigation is concluded or thirty days from the
118 date of receipt of the complaint, whichever occurs

119 first; (17) educational records which are not
120 subject to disclosure under the Family Educational
121 Rights and Privacy Act, 20 USC 1232g.

122 Sec. 2. Section 1-18a of the general
123 statutes, as amended by section 1 of public act
124 97-47, is repealed and the following is
125 substituted in lieu thereof:

126 As used in this chapter, the following words
127 and phrases shall have the following meanings,
128 except where such terms are used in a context
129 which clearly indicates the contrary:

130 (1) "Public agency" or "agency" means any
131 executive, administrative or legislative office of
132 the state or any political subdivision of the
133 state and any state or town agency, any
134 department, institution, bureau, board,
135 commission, authority or official of the state or
136 of any city, town, borough, municipal corporation,
137 school district, regional district or other
138 district or other political subdivision of the
139 state, including any committee of, or created by,
140 any such office, subdivision, agency, department,
141 institution, bureau, board, commission, authority
142 or official, and also includes any judicial
143 office, official, or body or committee thereof but
144 only in respect to its or their administrative
145 functions.

146 (2) "Meeting" means any hearing or other
147 proceeding of a public agency, any convening or
148 assembly of a quorum of a multimember public
149 agency, and any communication by or to a quorum of
150 a multimember public agency, whether in person or
151 by means of electronic equipment, to discuss or
152 act upon a matter over which the public agency has
153 supervision, control, jurisdiction or advisory
154 power. "Meeting" shall not include: Any meeting of
155 a personnel search committee for executive level
156 employment candidates; any chance meeting, or a
157 social meeting neither planned nor intended for
158 the purpose of discussing matters relating to
159 official business; strategy or negotiations with
160 respect to collective bargaining; a caucus of
161 members of a single political party
162 notwithstanding that such members also constitute
163 a quorum of a public agency; an administrative or
164 staff meeting of a single-member public agency;
165 and communication limited to notice of meetings of
166 any public agency or the agendas thereof. A quorum

167 of the members of a public agency who are present
168 at any event which has been noticed and conducted
169 as a meeting of another public agency under the
170 provisions of the Freedom of Information Act shall
171 not be deemed to be holding a meeting of the
172 public agency of which they are members as a
173 result of their presence at such event.

174 (3) "Caucus" means a convening or assembly of
175 the enrolled members of a single political party
176 who are members of a public agency within the
177 state or a political subdivision.

178 (4) "Person" means natural person,
179 partnership, corporation, limited liability
180 company, association or society.

181 (5) "Public records or files" means any
182 recorded data or information relating to the
183 conduct of the public's business prepared, owned,
184 used, received or retained by a public agency,
185 whether such data or information be handwritten,
186 typed, tape-recorded, printed, photostated,
187 photographed or recorded by any other method.

188 (6) "Executive sessions" means a meeting of a
189 public agency at which the public is excluded for
190 one or more of the following purposes: (A)
191 Discussion concerning the appointment, employment,
192 performance, evaluation, health or dismissal of a
193 public officer or employee, provided that such
194 individual may require that discussion be held at
195 an open meeting; (B) strategy and negotiations
196 with respect to pending claims or pending
197 litigation to which the public agency or a member
198 thereof, because of his conduct as a member of
199 such agency, is a party until such litigation or
200 claim has been finally adjudicated or otherwise
201 settled; (C) matters concerning security strategy
202 or the deployment of security personnel, or
203 devices affecting public security; (D) discussion
204 of the selection of a site or the lease, sale or
205 purchase of real estate by a political subdivision
206 of the state when publicity regarding such site,
207 lease, sale, purchase or construction would cause
208 a likelihood of increased price until such time as
209 all of the property has been acquired or all
210 proceedings or transactions concerning same have
211 been terminated or abandoned; and (E) discussion
212 of any matter which would result in the disclosure
213 of public records or the information contained

214 therein described in subsection (b) of section
215 1-19, AS AMENDED.

216 (7) "Personnel search committee" means a body
217 appointed by a public agency, whose sole purpose
218 is to recommend to the appointing agency a
219 candidate or candidates for an executive-level
220 employment position. Members of a "personnel
221 search committee" shall not be considered in
222 determining whether there is a quorum of the
223 appointing or any other public agency.

224 (8) "Pending claim" means a written notice to
225 an agency which sets forth a demand for legal
226 relief or which asserts a legal right stating the
227 intention to institute an action in an appropriate
228 forum if such relief or right is not granted.

229 (9) "Pending litigation" means (A) a written
230 notice to an agency which sets forth a demand for
231 legal relief or which asserts a legal right
232 stating the intention to institute an action
233 before a court if such relief or right is not
234 granted by the agency; (B) the service of a
235 complaint against an agency returnable to a court
236 which seeks to enforce or implement legal relief
237 or a legal right; or (C) the agency's
238 consideration of action to enforce or implement
239 legal relief or a legal right.

240 (10) "Freedom of Information Act" means
241 sections 1-15, 1-18a, 1-19, 1-19a, 1-19b, 1-20a,
242 1-20b, 1-20c, 1-20e, 1-20f, 1-21, 1-21a, 1-21c,
243 1-21d, 1-21e, 1-21f, 1-21g, 1-21h, 1-21i, 1-21j,
244 1-21k, and 1-21l, AS AMENDED.

245 (11) "TRADE SECRET" MEANS ANY FORMULA,
246 PATTERN, DEVICE OR COMPILATION OF INFORMATION
247 WHICH GIVES THE HOLDERS OF SUCH INFORMATION AN
248 OPPORTUNITY TO OBTAIN AN ADVANTAGE OVER
249 COMPETITORS WHO DO NOT KNOW OR USE SUCH FORMULA,
250 PATTERN, DEVICE OR COMPILATION OF INFORMATION.

251 Sec. 3. This act shall take effect July 1,
252 1998.

253 GAE COMMITTEE VOTE: YEA 17 NAY 0 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5395

STATE IMPACT	None
MUNICIPAL IMPACT	None
STATE AGENCY(S)	None

* * * * *

OLR BILL ANALYSIS

SHB 5395

AN ACT CONCERNING THE NONDISCLOSURE OF TRADE SECRETS UNDER THE FREEDOM OF INFORMATION ACT

SUMMARY: This bill expands the Freedom of Information Act (FOIA) exemption for trade secrets by adding those held by municipally owned utilities to the list of items the FOIA does not require public agencies to disclose.

The bill restates the definition of "trade secrets." Under current law, two categories of information come under the trade secret exemption: (1) unpatented, secret, commercially valuable plans, appliances, formulas, or processes used to make, compound, treat, or process confidential trade commodities and (2) commercial or financial information given in confidence that is not required to be provided by law. The bill defines trade secrets as any formula, pattern, device, or information compilation that (1) is given in confidence, (2) is not required to be provided by law, and (3) provides the holder of the information with a competitive advantage over those who do not hold or use it. It is unclear how agencies will determine whether

they can refuse to provide trade secret information based on a competitive advantage.

EFFECTIVE DATE: July 1, 1998

BACKGROUND

Definition Source

The bill adopts the definition of trade secret used in a Connecticut Supreme Court case and quoted from the Restatement of Torts Sec. 757, comment b. The decision (Town and Country House and Homes Service, Inc. v. Evans, 150 Conn. 134 (1963)) includes the following other factors used in determining whether any formula, pattern, device, or information is a trade secret:

1. the extent to which the information is known outside the business,
2. the extent to which it is known by employees and others involved in the business,
3. the extent of measures taken by the employer to guard the secrecy of the information,
4. the value of the information to the employer and to his competitors,
5. the amount of effort or money expended by the employer in developing the information, and
6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 17 Nay 0